

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 478 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S. PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAMMAD ISHAQ NAZIR AHMED SAIYED

Versus

THE STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Petitioner

MR AG URAIZEE, LD. A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.S. PARIKH

Date of decision: 21/06/96

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. A.G. Uraizee,
Ld. APP for the respondent-State.

In the facts of the case the matter is finally heard today. The petitioner, an ex-Mamlatdar and a person suffering from chronic acute Myocardial Infraction and a patient of having diagnosed right renal stones with dilated upper pole calyceal system for the last about two

years, had an occasion to purchase a Maruti Fronte vehicle bearing registration no. GJ-16-C-39 from one magent Gopalbhai Shah. The said vehicle originally belonged to one Daudbhai Ismailbhai Ibrahim Patel of Rajpardi, Taluka Jhagadia, District Bharuch. The petitioner, after completing the legal formalities of the transfer by filing T.O. and T.T.O. forms before the appropriate registering authority i.e. R.T.O. Bharuch, got the vehicle registered in the name of the petitioner. Thus, since 15/6/1995 the petitioner is the registered owner of the vehicle in question.

In or around November 1995 the aforesaid vehicle came to be seized by the Investigating Officer in respect of the F.I.R. being No. I 55/93 lodged in the Ankla Police Station, Petlad, District Kheda at Nadiad on or around 1/5/1993. It is the case of the petitioner that he was in no manner involved in the offence or offences set out in the aforesaid F.I.R. and he has been a bonafide purchaser of the aforesaid vehicle for valueable consideration without any reasonable notice or reason to believe that the said vehicle was used in any nefarious activities prior to the purchase thereof by the petitioner. The petitioner, therefore, preferred an application before the learned Judicial Magistrate First Class, Borsad, who rejected the same by order dated 18/11/1995 on the ground that one truck having been involved in carrying of arms, ammunitions and explosives was not released till upto the rejection of the application of the releasing of the said truck before the learned Magistrate and till upto the decision in the Revision Petition against the order passed by the learned Magistrate, rendered by the learned Sessions Judge at Nadiad. However, the said truck was directed to be release by this Court in Criminal Misc. Application No. 99 of 1996 by order dated 5/2/1996 (Coram : D.G. Karia, J.). Now the allegation with regard to the aforesaid vehicle, namely Maruti Fronte is that it was allegedly used for piloting the truck, which was the vehicle in question in Criminal Misc. Application No. 99 of 1996. The learned Judicial Magistrate First Class by his order dated 12/12/1995 rejected the petitioner's application for release of the Maruti Fronte and the learned Sessions Judge also rejected the petitioner's Revision Application by his order dated 24/1/1996, that is how the petitioner is before this Court in this Special Criminal Application and the petitioner has relied upon the order passed by this Court in respect of the truck as stated above.

Mr. A.G. Uraizee, Ld. A.P.P. for the respondent would like to raise a technical objection

about the maintainability of the present petition. He, however, submitted that as in Misc. Criminal Application No. 99 of 1996 he would also submit that no reasons should be recorded for passing the order. In the facts and circumstances of the case, therefore, no reasons are assigned for passing this order. It would only be sufficient to state that the petitioner was not the owner of the vehicle in question when the alleged offences had taken place and that the petitioner was in no way involved in the commission of the said offences. In the peculiar facts and circumstances of the case, therefore, the vehicle, Maruti Fornte, in question should not have been detained in police custody and the same is required to be handed-over back to the petitioner on following conditions :-

- (1) The petitioner shall not transfer or alienate or hand-over the vehicle in question to any one during the pendency of the proceedings against criminal case against accused persons.
- (2) The petitioner shall present the vehicle in question as and when required by the trial Court or the Sessions Court.
- (3) The petitioner shall produce security in the sum of Rs.1 lac and shall further undertake that he will get the vehicle in question in proper and good condition and shall not use the same for any illegal activity.

On the aforesaid conditions the vehicle in question, Maruti Fronte, bearing No. GJ-16-C-39 is ordered to be handed-over to the petitioner while quashing the impugned orders. Rule is made absolute in the aforesaid terms. D.S.P.

Date : 21/6/1996. (M.S. Parikh,J.)